

### § 3.272

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(f) *Deferred determinations.* (1) When an individual is unable to predict with certainty the amount of countable annual income, the annual rate of improved pension shall be reduced by the greatest amount of anticipated countable income until the end of the 12-month annualization period, when total income received during that period will be determined and adjustments in pension payable made accordingly.

(Authority: 38 U.S.C. 501)

(2) When a claimed dependent is shown to have income which exceeds the additional amount of benefits payable based on the claimed dependency, but evidence requirements of § 3.204, § 3.205, § 3.209, or § 3.210 have not been met, the maximum annual rate of improved pension shall be determined without consideration of the claimed dependency. This amount shall be reduced by an amount which includes the income of the unestablished dependent. Adjustments in computation of the maximum annual rate of improved pension shall occur following receipt of evidence necessary to establish the dependency.

(Authority: 38 U.S.C. 501(a))

(g) *Compensation (civilian) for injury or death.* Compensation paid by the United States Department of Labor, Office of Workers' Compensation Programs, Social Security Administration, or the Railroad Retirement Board, or pursuant to any worker's compensation or employer's liability statute, or damages collected because of personal injury or death, will be considered income as received. However, medical, legal or other expenses incident to the injury or death, or incident to the collection or recovery of the amount of the award or settlement, may be deducted. The criteria in § 3.272(g) apply as to all medical expenditures after the award or settlement.

(Authority: 38 U.S.C. 501)

(h) *Fractions of dollars.* Fractions of dollars will be disregarded in computing annual income.

[44 FR 45936, Aug. 6, 1979, as amended at 53 FR 23235, June 21, 1988; 57 FR 59299, Dec. 15, 1992]

### § 3.272 Exclusions from income.

The following shall be excluded from countable income for the purpose of determining entitlement to improved pension. Unless otherwise provided, expenses deductible under this section are deductible only during the 12-month annualization period in which they were paid.

(Authority: 38 U.S.C. 501)

(a) *Welfare.* Donations from public or private relief, welfare, or charitable organizations.

(Authority: 38 U.S.C. 1503(a)(1))

(b) *Maintenance.* The value of maintenance furnished by a relative, friend, or a charitable organization (civic or governmental) will not be considered income. Where the individual is maintained in a rest home or other community institution or facility, public or private, because of impaired health or advanced age, money paid to the home or the individual to cover the cost of maintenance will not be considered income, regardless of whether it is furnished by a relative, friend, or charitable organization. The expense of maintenance is not deductible if it is paid from the individual's income.

(Authority: 38 U.S.C. 501, 1503(a)(1))

(c) *Department of Veterans Affairs pension benefits.* Payments under chapter 15 of title 38, United States Code, including accrued pension benefits payable under 38 U.S.C. 5121.

(Authority: 38 U.S.C. 1503(a)(2))

(d) *Reimbursement for casualty loss.* Reimbursement of any kind for any casualty loss. The amount to be excluded is not to exceed the greater of the fair market value or the reasonable replacement cost of the property involved at the time immediately preceding the loss. For purposes of this paragraph, the term "casualty loss"

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means the complete or partial destruction of property resulting from an identifiable event of a sudden, unexpected or unusual nature.

(Authority: 38 U.S.C. 1503(a)(5))

(e) *Profit from sale of property.* Profit realized from the disposition of real or personal property other than in the course of business, except amounts received in excess of the sales price, for example, interest on deferred sales is included as income. In installment sales, any payments received until the sales price is recovered are not included as income, but any amounts received which exceed the sales price are included, regardless of whether they represent principal or interest.

(Authority: 38 U.S.C. 1503(a)(6))

(f) *Joint accounts.* Amounts in joint accounts in banks and similar institutions acquired by reason of death of the other joint owner.

(Authority: 38 U.S.C. 1503(a)(7))

(g) *Medical expenses.* Within the provisions of the following paragraphs, there will be excluded from the amount of an individual's annual income any unreimbursed amounts which have been paid within the 12-month annualization period for medical expenses regardless of when the indebtedness was incurred. An estimate based on a clear and reasonable expectation that unusual medical expenditure will be realized may be accepted for the purpose of authorizing prospective payments of benefits subject to necessary adjustment in the award upon receipt of an amended estimate, or after the end of the 12-month annualization period upon receipt of an eligibility verification report.

(Authority: 38 U.S.C. 501)

(1) *Veteran's income.* Unreimbursed medical expenses will be excluded when all of the following requirements are met:

(i) They were or will be paid by a veteran or spouse for medical expenses of the veteran, spouse, children, parents and other relatives for whom there is a moral or legal obligation of support;

(ii) They were or will be incurred on behalf of a person who is a member or a constructive member of the veteran's or spouse's household; and

(iii) They were or will be in excess of 5 percent of the applicable maximum annual pension rate or rates for the veteran (including increased pension for family members but excluding increased pension because of need for aid and attendance or being housebound) as in effect during the 12-month annualization period in which the medical expenses were paid.

(2) *Surviving spouse's income.* Unreimbursed medical expenses will be excluded when all of the following requirements are met:

(i) They were or will be paid by a surviving spouse for medical expenses of the spouse, veteran's children, parents and other relatives for whom there is a moral or legal obligation of support;

(ii) They were or will be incurred on behalf of a person who is a member or a constructive member of the spouse's household; and

(iii) They were or will be in excess of 5 percent of the applicable maximum annual pension rate or rates for the spouse (including increased pension for family members but excluding increased pension because of need for aid and attendance or being housebound) as in effect during the 12-month annualization period in which the medical expenses were paid.

(Authority: 38 U.S.C. 501)

(3) *Children's income.* Unreimbursed amounts paid by a child for medical expenses of self, parent, brothers and sisters, to the extent that such amounts exceed 5 percent of the maximum annual pension rate or rates payable to the child during the 12-month annualization period in which the medical expenses were paid.

(Authority: 38 U.S.C. 501)

(h) *Expenses of last illnesses, burials, and just debts.* Expenses specified in paragraphs (h)(1) and (h)(2) of this section which are paid during the calendar year following that in which death occurred may be deducted from annual income for the 12-month annualization period in which they were paid or from annual income for any 12-month

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annualization period which begins during the calendar year of death, whichever is to the claimant's advantage. Otherwise, such expenses are deductible only for the 12-month annualization period in which they were paid.

(Authority: 38 U.S.C. 501)

(1) *Veteran's final expenses.* (i) Amounts paid by a spouse before a veteran's death for expenses of the veteran's last illness will be deducted from the income of the surviving spouse.

(Authority: 38 U.S.C. 1503(a)(3))

(ii) Amounts paid by a surviving spouse or child of a veteran for the veteran's just debts, expenses of last illness and burial (to the extent such burial expenses are not reimbursed under chapter 23 of title 38 U.S.C.) will be deducted from the income of the surviving spouse or child. The term "just debts" does not include any debt that is secured by real or personal property.

(Authority: 38 U.S.C. 1503(a)(3))

(2) *Spouse or child's final expenses.* (i) Amounts paid by a veteran for the expenses of the last illness and burial of the veteran's deceased spouse or child will be deducted from the veteran's income.

(ii) Amounts paid by a veteran's spouse or surviving spouse for expenses of the last illness and burial of the veteran's child will be deducted from the spouse's or surviving spouse's income.

(Authority: 38 U.S.C. 1503(a)(4))

(i) *Educational expenses.* Amounts equal to expenses paid by a veteran or surviving spouse pursuing a course of education or vocational rehabilitation or training, to include amounts paid for tuition, fees, books, and materials, and in the case of a veteran or surviving spouse in need of regular aid and attendance, unreimbursed amounts paid for unusual transportation expenses in connection with the pursuit of such course. Unusual transportation expenses are those exceeding the reasonable expenses which would have been incurred by a nondisabled person using an appropriate means of trans-

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portation (public transportation, if reasonably available).

(Authority: 38 U.S.C. 1503(a)(9))

(j) *Child's income.* In the case of a child, any current work income received during the year, to the extent that the total amount of such income does not exceed an amount equal to the sum of the following:

(1) The lowest amount of gross income for which a Federal income tax return must be filed, as specified in section 6012(a) of the Internal Revenue Code of 1954, by an individual who is not married (as determined under section 143 of such Code), and is not a surviving spouse (as defined in section 2(a) of such Code), and is not a head of household (as defined in section 2(b) of such Code); and

(2) If the child is pursuing a course of postsecondary education or vocational rehabilitation or training, the amount paid by the child for those educational expenses including the amount paid for tuition, fees, books, and materials.

(Authority: 38 U.S.C. 1503(a)(10))

(k) *Domestic Volunteer Service Act Programs.* Payments received under a Domestic Volunteer Service Act (DVSA) Program (including Volunteers in Service to America (VISTA), University Year for ACTION (UYA), Foster Grandparent Program (FGP), Retired Senior Volunteer Program (RSVP), Senior Companion Program) shall be excluded as provided in paragraphs (k)(1) and (2) of this section:

(1) All DVSA payments received before December 13, 1979, shall be excluded from determining entitlement to improved pension.

(Authority: 42 U.S.C. 5044(g) (1973))

(2) DVSA payments received after December 12, 1979, shall be excluded from determining entitlement to improved pension unless the Director of the ACTION Agency has determined that the value of all DVSA payments, adjusted to reflect the number of hours served by the volunteer, equals or exceeds the minimum wage then in effect under the Fair Labor Standards Act of 1938 or the minimum wage of the State

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where the volunteer served, whichever is the greater.

(Authority: 42 U.S.C. 5044(g) (1979))

(l) *Distributions of funds under 38 U.S.C. 1718.* Distributions from the Department of Veterans Affairs Special Therapeutic and Rehabilitation Activities Fund as a result of participation in a therapeutic or rehabilitation activity under 38 U.S.C. 1718 and payments from participation in a program of rehabilitative services provided as part of the care furnished by a State home and which is approved by VA as conforming to standards for activities under 38 U.S.C. 1718 shall be considered donations from a public or private relief or welfare organization and shall not be countable as income for pension purposes.

(Authority: 38 U.S.C. 1718(f))

(m) *Hardship exclusion of child's available income.* When hardship is established under the provisions of § 3.23(d)(6) of this part, there shall be excluded from the available income of any child or children an amount equal to the amount by which annual expenses necessary for reasonable family maintenance exceed the sum of countable annual income plus VA pension entitlement computed without consideration of this exclusion. The amount of this exclusion shall not exceed the available income of any child or children, and annual expenses necessary for reasonable family maintenance shall not include any expenses which were considered in determining the available income of the child or children or the countable annual income of the veteran or surviving spouse.

(Authority: 38 U.S.C. 1521(h), 1541(g))

(n) *Survivor benefit annuity.* Annuity paid by the Department of Defense under the authority of section 653, Public Law 100-456 to qualified surviving spouses of veterans who died prior to November 1, 1953. (September 29, 1988)

(Authority: Sec. 653, Pub. L. 100-456; 102 Stat. 1991)

(o) *Agent Orange settlement payments.* Payments received by any person in settlement of the case of In re Agent

Orange product liability litigation in the United States District Court for the Eastern District of New York (M.D.L. No. 381). (January 1, 1989)

(Authority: Pub. L. 101-201, 103 Stat. 1795)

(p) *Restitution to individuals of Japanese ancestry.* Any payment made as restitution under Public Law 100-383 to individuals of Japanese ancestry who were interned, evacuated, or relocated during the period December 7, 1941, through June 30, 1946, pursuant to any law, Executive order, Presidential proclamation, directive, or other official action respecting these individuals. (August 10, 1988)

(Authority: Sec. 105, Pub. L. 100-383; 102 Stat. 905)

(q) *Cash surrender value of life insurance.* That portion of proceeds from the cash surrender of a life insurance policy which represents a return of insurance premiums.

(Authority: 38 U.S.C. 501(a))

(r) *Income received by American Indian beneficiaries from trust or restricted lands.* Income of up to \$2,000 per calendar year to an individual Indian from trust lands or restricted lands as defined in 25 CFR 151.2. (January 1, 1994)

(Authority: Sec. 13736, Pub. L. 103-66; 107 Stat 633)

(s) *Radiation Exposure Compensation Act.* Any payment made under Section 6 of the Radiation Exposure Compensation Act of 1990.

(Authority: 42 U.S.C. 2210 note)

(t) *Alaska Native Claims Settlement Act.* Any receipt by an individual of cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed \$2,000 per individual per annum; stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock); a partnership interest; land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution

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on stock); and an interest in a settlement trust. (November 2, 1994)

(Authority: Sec. 506, Pub. L. 103–446)

(u) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans or children of veterans with covered service in Korea.* Any allowance paid under the provisions of 38 U.S.C. chapter 18 to or for an individual who is a child of a Vietnam veteran or a child of a veteran with covered service in Korea.

(Authority: 38 U.S.C. 1833(c))

(v) *Victims of Crime Act.* Amounts received as compensation under the Victims of Crime Act of 1984 unless the total amount of assistance received from all federally funded programs is sufficient to fully compensate the claimant for losses suffered as a result of the crime.

(Authority: 42 U.S.C. 10602(c))

(w) *Medicare Prescription Drug Discount Card and Transitional Assistance Program.* The payments received under the Medicare transitional assistance program and any savings associated with the Medicare prescription drug discount card.

(Authority: 42 U.S.C. 1395w–141(g)(6))

(x) *Life insurance proceeds.* Lump-sum proceeds of any life insurance policy on a veteran.

(Authority: 38 U.S.C. 1503(a)(11))

[44 FR 45936, Aug. 6, 1979]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 3.272, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

#### § 3.273 Rate computation.

The commencement date of change in benefit payments based on rate computations under the provisions of this section will be determined under the provisions of § 3.31 or § 3.660.

(a) *Initial award.* For the purpose of determining initial entitlement, or for resuming payments on an award which was previously discontinued, the monthly rate of pension payable to a beneficiary shall be computed by reducing the beneficiary's applicable

maximum pension rate by the beneficiary's countable income on the effective date of entitlement and dividing the remainder by 12. Effective June 1, 1983, the provisions of § 3.29(b) apply to this paragraph. Recomputation of rates due to changes in the maximum annual pension rate or rate of income following the initial date of entitlement are subject to the provisions of paragraph (b) of this section.

(b) *Running awards—(1) Change in maximum annual pension rate.* Whenever there is change in a beneficiary's applicable maximum annual pension rate, the monthly rate of pension payable shall be computed by reducing the new applicable maximum annual pension rate by the beneficiary's countable income on the effective date of the change in the applicable maximum annual pension rate, and dividing the remainder by 12. Effective June 1, 1983, the provisions of § 3.29(b) apply to this paragraph.

(2) *Change in amount of income.* Whenever there is a change in a beneficiary's amount of countable income the monthly rate of pension payable shall be computed by reducing the beneficiary's applicable maximum annual pension rate by the beneficiary's new amount of countable income on the effective date of the change in the amount of income, and dividing the remainder by 12. Effective June 1, 1983, the provisions of § 3.29(b) apply to this paragraph.

(c) *Nonrecurring income.* The amount of any nonrecurring countable income (e.g. an inheritance) received by a beneficiary shall be added to the beneficiary's annual rate of income for a 12-month annualization period commencing on the effective date on which the nonrecurring income is countable.

(Authority: 38 U.S.C. 501)

(d) *Recurring and irregular income.* The amount of recurring and irregular income anticipated or received by a beneficiary shall be added to determine the beneficiary's annual rate of income for a 12-month annualization period commencing at the beginning of the 12-month annualization, subject to the